

Members

Rep. Ron Herrell, Chair
Rep. Richard Mangus
Rep. Dale Sturtz
Rep. David Wolkins
Sen. Beverly Gard
Sen. Kent Adams
Sen. Glenn Howard
Sen. Vi Simpson
David Benshoof
Michael Carnahan
Randy Edgemon
Hon. Jack Fowler
Marvin Gobles
William Goffinet
Max Goodwin
Lori Kaplan
Regina Mahoney
Kerry Michael Manders
David Rector
Gary Reding
Alice Schloss
Lynn Waters
Arthur Smith, Jr.
The Honorable Jim Trobaugh



ENVIRONMENTAL QUALITY SERVICE COUNCIL

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 232-9855 Fax: (317) 232-2554

LSA Staff:

Bernadette Bartlett, Fiscal Analyst for the Council
Robert Bond, Attorney for the Council
Timothy Tyler, Attorney for the Council

Authority: P.L. 248-1996 (SEA 138)

MEETING MINUTES¹

Meeting Date: November 22, 2000
Meeting Time: 1:30 p.m.
Meeting Place: Governmental Center South, 302 W.
Washington St., Conf. Room C
Meeting City: Indianapolis, Indiana
Meeting Number: 6

Members Present: Rep. Ron Herrell, Chair; Rep. Richard Mangus; Rep. Dale Sturtz; Rep. David Wolkins; Sen. Beverly Gard; Sen. Kent Adams; David Benshoof; Randy Edgemon; Marvin Gobles; Lori F. Kaplan; Regina Mahoney; Kerry Michael Manders; Arthur Smith, Jr.; Hon. Jim Trobaugh.

Members Absent: Sen. Vi Simpson; Sen. Glenn Howard; Michael Carnahan; Hon. Jack Fowler; William Goffinet; David Rector; Gary Reding; Alice Schloss; and Lynn Waters.

Additional Testimony to the Minutes of November 13, 2000. A follow-up discussion with respect to air quality standards clarified that air quality in Elkhart County meets the standard of 85 parts per billion, but IDEM advised that EPA's guidance for non-attainment designations takes other criteria into consideration.

Call to Order. Rep. Ron Herrell, Chair of the Environmental Quality Service Council (EQSC), called the meeting to order. He thanked Sen. Simpson, Chair of the Wetlands Subcommittee, and Sen. Gard, Chair of the Septic Systems Subcommittee, for their extremely important and thorough work, noting that

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

the list of individuals who testified at both subcommittees was extensive. He also thanked the staff. He then asked Susan McLoud, Water Quality Liaison to the Indiana Department of Environmental Management (IDEM), Natural Resources Conservation Service, U.S. Department of Agriculture, to provide the Council with an overview of agricultural buffer zones.

Agricultural Buffer Zones. Ms. McLoud distributed a hand-out. (See Exhibit 1.) She noted that the Iowa Buffer Initiative is a good example of the Farm Bureau, Trees Forever, and state and federal agencies working together. They have set up over 100 demonstration sites around the state of Iowa. They have also set up a network of farmer-to-farmer exchange of information.

Commissioner's Report. Lori F. Kaplan, IDEM Commissioner, pointed out that the IDEM packets distributed contained a report on the Department's outreach efforts as well as the IDEM permit report card and end of the season report card. (See Exhibit 2.) Commissioner Kaplan highlighted some of the recent press releases, noting that 34 businesses and the Department of Defense have pledged to establish pollution prevention programs as a part of the Partners for Pollution Prevention. She also pointed out the list of maintenance shops that have joined the 5-Star Program for taking proactive steps to protect the environment and the child-care facilities that have received top honors for providing children with environmentally safe facilities.

Commissioner Kaplan also followed-up on items discussed at the previous meeting. With respect to Sen. Gard's question about the audit privilege statute and whether U.S.EPA was still comfortable with the statute which went into effect two years ago, IDEM did receive confirmation that EPA had found it to meet their rule requirements and it continues to do so. With respect to industrial waste and concerns and confusion pertaining to the change in law, IDEM is participating in community meetings across the state. IDEM is engaging in discussions that will be the basis for rule-making regarding industrial waste.

Final Report from the Septic Systems Subcommittee. Sen. Gard, Chair of the Septic Systems Subcommittee, reported on the work of the subcommittee. (Recommendations of the Septic Systems Subcommittee are contained in the *draft* final report of the EQSC. See Exhibit 3, pages 21 through 25.) Sen. Gard distributed changes to recommendations #2 and #3. (See Exhibit 4.) The addition to the second recommendation was taken by consent. Also with respect to recommendation #2, Sen. Gard proposed eliminating the phrase "residence in an unincorporated area," which begins in the third line of the second paragraph for recommendation #2. The phrase would exclude Marion County. This change was also approved by consent.

With respect to recommendation #3 concerning permitting jurisdictions, Sen. Gard offered two additions. (See Exhibit 4.) These additions were approved by consent. Sen. Gard reviewed the ten recommendations as amended. (See Exhibit 4, pages 24 through 25.)

Commissioner Kaplan stated for the record that because there is proposed legislation and potential fiscal impacts in the recommendations, she would be abstaining from voting on the recommendations. She, however, appreciated the work of the subcommittee.

Rep. Herrell noted that recommendations #9 and #10 were not specific recommendations. Sen. Gard recommended that #9 and #10 be changed to indicate that the recommendation was to continue to study the issues detailed in #9 and #10.

Kerry Manders commended Sen. Gard for her work with the subcommittee. Sen. Gard commended the work of the subcommittee members. She distributed additional recommendations that were brought before the subcommittee but not included. (See Exhibits 5, 6, and 7.)

A vote was taken to include the recommendations as amended from the Septic Systems Subcommittee in the EQSC final report. The Council voted to accept the recommendations as amended by a voice vote.

A vote was taken to include the report of the Septic Systems Subcommittee as amended in the EQSC final report. The Council accepted the report as amended by a voice vote.

Final Report from the Wetlands Subcommittee. Randy Edgemon presented the final report, including recommendations, of the Wetlands Subcommittee for Sen. Simpson, Chair of the Wetlands Subcommittee. (The final report, including recommendations of the Wetlands Subcommittee, are contained in the *draft* final report of the EQSC. See Exhibit 3, pages 14 through 20.) Mr. Edgemon thanked all those who participated in the subcommittee deliberations.

Commissioner Kaplan explained that with respect to recommendation #4, which pertained to the Interagency Coordination Agreement on Mitigation Banking, IDEM would be working in conjunction with other entities in implementing the program. She explained that a Mitigation Banking Agreement document currently exists. Signatories to the document are the Corps of Engineers, the Department of Natural Resources (DNR), and the U.S. Fish and Wildlife Service. IDEM had some concerns about the agreement and is working with the above mentioned entities to make changes to the agreement. Once agreement is reached, IDEM will also be a signatory to the Mitigation Banking Agreement.

Dr. Dennis Clark, Chief, Water Quality Standards, Water Planning Branch, IDEM, explained that the purpose of the agreement is to set guidelines for how the banks would be established and operated. All the signatories have either some regulatory authority or input into the process. The Corps of Engineers has a manual that delineates wetlands. The Corps either makes the delineation or approves of the delineation of a wetland. For an official permit, the Corps would have to approve the delineation. For purposes of conducting a wetland inventory, the DNR and IDEM would be able to apply the manual and delineate wetlands.

In order to acknowledge that IDEM would be working with other entities, the phrase “and then implements a mitigation banking program” in recommendation #4 was deleted by consent of the Council.

With respect to recommendation #6, which recommended that IDEM, the DNR, and other agencies prepare an inventory of wetlands, Mr. Edgemon noted that a proposed draft legislation had been prepared that reflected the recommendation. The proposed draft also included a section extending the expiration date of the EQSC. (See Exhibit 8.) Rep Herrell suggested that the two different issues—a wetland inventory and the extension of the EQSC-- should not be in the same proposal. Additionally, he noted that no net loss of wetlands should occur based on the rule and that an increase in the number of wetlands could result due to ratio requirements. He believed that an inventory was a good idea but did not believe that a statutory directive was needed to require that a inventory be conducted.

The introductory phrase of recommendation #6, which was “Upon approval of legislative authority and funding,” and the concluding phrase “by July 1, 2003” were deleted, and the amended recommendation was approved by consent of the Council.

Commissioner Kaplan indicated that IDEM would direct its staff toward preparing an inventory based on the EQSC recommendation.

With respect to recommendation #8, pertaining to the performance bond option, Rep. Herrell expressed his concern that a performance bond could be accepted for a wetland that is not replaceable. Rep. Herrell read Alice Schloss’ letter that opposed the option of performance bonding for Tier II wetlands. (See Exhibit 9.)

Arthur Smith stated that IDEM could develop regulation that would balance the need for development with the policy of no net loss. Sen. Gard suggested that the EQSC recommend that IDEM develop rules and criteria for allowing the performance bonding option in warranted situations worded in such a way as to give the Commissioner flexibility to consider performance bonding. Sen. Gard moved to make the

recommendation. Mr. Edgemon seconded the motion. The Council approved by consent the following amended language to recommendation #8: The EQSC recommends that IDEM develop rules for allowing in warranted circumstances a performance bond option in lieu of up-front mitigation. The Council approved the amended recommendation by consent.

A vote was taken to include the recommendations as amended from the Wetlands Subcommittee in the EQSC final report. The Council accepted the recommendations as amended by a voice vote.

A vote was taken to include the report of the Wetlands Subcommittee as amended in the EQSC final report. The Council accepted the report as amended by a voice vote.

Recommendation for the Clean Water Indiana Fund. The Indiana Association of Soil and Water Conservation Districts submitted a recommendation pertaining to the Clean Water Indiana Fund. (See Exhibit 10.) Sen. Gard noted that the Council has never recommended a specific dollar amount, as was in the recommendation, and that the Council has only heard a fifteen minute presentation on the issue that requested \$12 million. She did not feel that she had enough information to determine if \$12 million was the appropriate amount. The dollar amount was removed from the proposal and replaced with “funding.” The Council considered the following recommendation: The EQSC recommends that the Indiana General Assembly provide adequate funding for the Clean Water Indiana Fund. Rep. Wolkins expressed his concern that the Clean Water Indiana Fund was not funded in the previous session and that the recommendation does not identify a specific dollar amount. A vote was taken to include the recommendation as amended in the EQSC final report. The measure, however, did not pass due to a lack of a majority of the members voting in the affirmative. Eleven members present voted for the measure; Commissioner Kaplan abstained, explaining that the recommendation included fiscal impacts and she was not in a position at this point in the state’s budget preparations.

Recommendation to Extend the Expiration Date for the EQSC. Sen. Gard recommended that the Council be extended for five years. The EQSC recommended that the EQSC be extended until December 31, 2005 by a voice vote.

Vote on the EQSC Final Report. A vote was taken to approve of the EQSC draft final report as amended as the EQSC 2000 Final Report. The measure, however, did not pass due to a lack of a majority of the members voting in the affirmative. Rep. Wolkins noted that he did not feel comfortable with the limited time allowed for discussion of the issues. Rep. Herrell noted that in reviewing the list of those who testified and in talking with the subcommittee chairs, no one was excluded from testifying at the subcommittee hearings. Sen. Gard noted that the subcommittees tried to be very inclusive.

Agency-wide Services. Jeff Underwood, Controller, IDEM, provided a brief up-date on agency-wide services.

Adjournment. The meeting was adjourned at approximately 4:15 p.m.